



## **OHIO BOARD OF TAX APPEALS**

### **Annual Report Fiscal Year 2020**

R.C. 149.01 requires the Ohio Board of Tax Appeals to file an annual report with the governor, the secretary of state and the state library, on every August first summarizing the official acts of the board...“and any suggestions and recommendations that are proper.”

This report fulfills the annual reporting requirement for the fiscal year ending June 30, 2020.

**Governor Mike DeWine**  
**Secretary of State Frank LaRose**  
**State Librarian Beverly Cain**

**Executive Summary:**

In fiscal year 2020 the Board's docket was significantly impacted as a result of the COVID-19 pandemic. As directed by Governor DeWine, the Board started working remotely in the beginning of March and continued through the end of fiscal year 2020. Although operations were notably modified, the Board remained operational and continued to serve taxpayers.

To maintain the health and wellbeing of all persons who conduct business at the Board, all in person hearings were continued to the spring of FY2021. Those appeals that were scheduled for an in person hearing but did not disclose witnesses were converted to a briefing schedule. The Board continued to issue decisions on those cases briefed and the small claims telephonic hearings continued as scheduled. Beginning in April 2020, the Board held its meetings telephonically.

The Board continued to fulfill its commitment to provide ongoing internal and external education, as such, the Board and staff attended the annual Manufacturer's Education Council Tax Conference and attend various Department of Taxation virtual tax seminars.

In FY2020, due to the COVID pandemic, the Board, along with all other state agencies, was placed under a mandatory hiring freeze and budget reduction which extends into FY2021. Also, lower tribunals were unable to meet to issue decisions which could be appealed the Board.



Kathleen Crowley  
Executive Director

## Ohio Board of Tax Appeals

### **Chairman David Harbarger**

Mr. Harbarger brings over 40 years of law experience to the Board. Mr. Harbarger's areas of expertise include municipal law, property development and charitable organizations. Mr. Harbarger served as the Law Director for two local communities. Mr. Harbarger is a retired Lieutenant Colonel from the United States Army.

### **Vice-Chairman Jasmine Clements**

Jasmine Clements was appointed by Gov. John Kasich to the Ohio Board of Tax Appeals in April, 2015. Ms. Clements brings more than a decade of legal experience in government and private sector representation. She holds a Bachelor of Arts (Accounting) and a Juris Doctor from Capital University in Columbus, Ohio.

### **Board Member Jeffery Caswell**

Jeff Caswell is an active CPA and is the Chief Financial Officer of a Central Ohio based manufacturing and services firm. Mr. Caswell started his career in public accounting where he worked on tax filings and audit assurance engagements. Post public accounting, his focus in finance and accounting has been with companies across a wide spectrum of industry and size from SEC registrant to small privately held businesses. Mr. Caswell earned his Accounting degree from Miami University and his Masters in Business Administration from The Ohio State University.

**Mission**

The mission of the Board of Tax Appeals, as Ohio's administrative tax court, is to provide taxpayers and taxing authorities with an accessible, fair and efficient appeals process and to resolve appeals in a timely and judicious manner by facilitating settlement or by issuing comprehensive written decisions, which are based upon Ohio statutes, case law, and board precedent.

**Function**

The BTA is Ohio's administrative tax court. It is a quasi-judicial body established by Ohio Revised Code 5703.02, and comprised of three (3) members appointed by the governor to overlapping six-year terms. The BTA adjudicates state tax disputes, relieving an overburdened state judicial system and providing taxpayers with a non-partisan forum in which to resolve tax disputes. In this forum, taxpayers are assured appeals will be addressed by individuals with considerable expertise focused exclusively on tax issues.

**Process**

Most appeals involve real property valuation disputes, for which the process is as follows:

1. A notice of appeal from a decision of a BOR is filed with the BTA.
  - a. On the appeal form, the appellant indicates whether they require an evidentiary hearing, or if a review of the existing BOR record will suffice
2. Depending on the appellant's decision, the board establishes either an evidentiary hearing date, or a date by which all written argument is due from the parties to the appeal.
3. The BOR files a transcript of the proceedings that occurred at the county level with the BTA within 45 days.
4. The discovery process is completed within 120 days.
5. All evidence is considered and a decision is rendered by the board thereafter.

Filers enter appeal information directly into the BTA's case management system from anywhere (with internet access) at any time (24/7/365). Once submitted, reviewed and accepted, all parties are notified electronically that an appeal has been filed, the case number assigned and the evidentiary hearing or written argument date.

After the evidentiary hearing or the written argument date, a Hearing Examiner reviews the entire record and drafts a decision for the board to consider. After consideration, the decision of the board is announced.

**Interesting Decisions****Standard communication cabling is incorporated into the real property**

The taxpayer appealed final determinations of the Tax Commissioner denying refund claims for sales tax paid on the installation of communication cabling for Voice over Internet Protocol (“VoIP”) and internet. The Board concluded that since the cabling could be installed in any office building for VoIP and internet communications and are as common to commercial property as telephone lines and coaxial cables were in the past, its installation constitutes a construction contract under R.C. 5739.01(B)(5) and not a retail sale subject to sales tax. The Board further concluded that an Information Release from the Department of Taxation regarding the sales taxes due on the sale and installation of all computer cabling was incorrect given the ubiquitous presence of industry-standard cabling in commercial buildings. The matter was not appealed.

*Nationwide Mutual Insurance Company v. McClain* (Oct. 22, 2019), BTA Nos. 2018-313, et al., unreported.

**The Ohio State University Airport is used for the support of the university and is exempt from real property taxation**

In an appeal challenging the OSU’s exemption from real property taxes for the land and improvements known as The Ohio State University Airport or Don Scott Field, the Board found that the property satisfied the requirements of R.C. 3345.17, which exempts certain real property held for the use and benefit of a state university. The Board explained that under this code section, so long as the airport is used in a manner that operationally relates to university activities, its income-generating commercial uses do not disqualify it from exemption. The Board noted the university’s educational uses of the property, including thirty degree programs that are supported by the airport, such as the flight education program and aviation courses. The Board found that commercial users at the airport provided financial support to the airport and university allowing educational experiences for the provided there, and directly benefit the students by providing networking and observation opportunities. The Board observed the presence of the control tower, lighting systems, communication systems, navigation systems, and the technology present at the airport, as well as research projects as evidence for the finding that the airport, including its commercial users, support and benefit the university. The matter is pending on appeal to the Ohio Supreme Court.

*O’Keeffe v. McClain* (Dec. 31, 2019), BTA No. 2018-482, unreported. On appeal.

**A county prosecutor is not authorized to accept the filing of an appellant’s notice of appeal on behalf of the County Board of Revision**

In an appeal from a decision of the Stark County Board of Revision, the appellants served their notice of appeal on the county prosecutor but did not file it directly with the board of revision. The Board noted that a prosecuting attorney is not authorized to accept a notice of appeal in lieu of filing such notice with the board of revision. Because the appellants did not provide proof that they filed such notice directly with the board of revision within thirty days of the issuance of the decision, the Board found that the appeal was insufficient to invoke the Board’s jurisdiction. The appeal was, therefore, dismissed. A motion for reconsideration was denied.

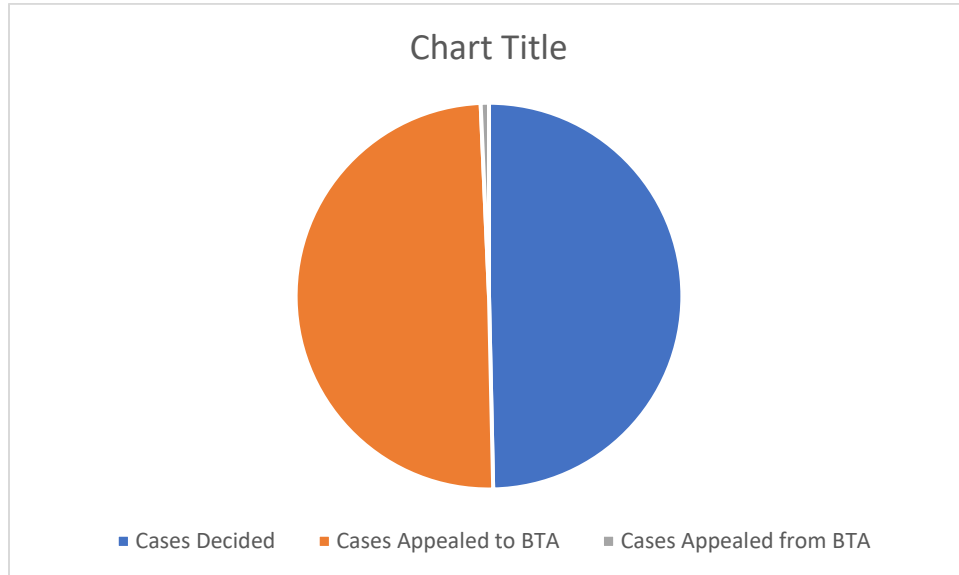
*Haws Scott M & Wimer Laura A Trustees of The Haws Wimer Revocable Trust Dated May 2, 2016 v. Stark Cty. Bd. of Revision* (July 29, 2019), BTA No. 2019-623, unreported.

**Real property tax exemption granted to home for the aged run by Catholic sisters**

In an appeal from a final determination of the Tax Commissioner involving a real property tax exemption sought by the Antonine Maronite Sisters of Youngstown, the Board held the Sisters satisfied the “life care” requirement despite the fact their client contract contained a clause permitting the Sisters to remove a client for nonpayment. The Sisters testified their religious vows would not permit them to remove a client for nonpayment, and they testified the clause was unintended.

*Antonine Maronite Sisters of Youngstown, Inc. v. McClain (Jan. 7, 2020), BTA No. 2018-25, unreported.*

**Filings FY2020**



**Official Acts**

The Board met 11 times in FY2020. During the fiscal year, the Board issued 2876 decision and orders which resolved active appeals.